

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3608 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

SHABUDDIN @ SAYABAN IBRAHIM SINDDHI DAFER BHATTI

Versus

STATE OF GUJARAT & ORS.

Appearance:

MS JAYSHREE BHATT FOR MRS MADHUBEN SHARMA for Petitioner
MR KT DAVE ADDL.GOVERNMENT PLEADER for Respondents.

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 06/09/1999

ORAL JUDGEMENT

Heard learned advocate Ms. Jayshree Bhatt for
advocate Mrs. Madhuben S. Sharma on behalf of petitioner
and learned APP Mr. K.T.Dave for respondents.

2. The petition is filed under Art.226 of the
Constitution of India with a prayer to claim appropriate
writ or direction to quash and set aside detention order
dt. 16/11/1998 passed by respondent no.2 against the

petitioner in exercise of power conferred by Sec.3 (1) of Gujarat Prevention of Anti- Social Activities Act, 1985 ("Pasa " for short)

3. The petitioner has produced impugned order of detention and committal order at Annexure A vide Page 11 and 12 of the compilation. While grounds of detention are produced vide Annexure : B.

4. It appears from the grounds of detention that on the basis of material produced before respondent no.2 by Sponsoring authority, respondent no.2 has classified the petitioner as "dangerous person" within the meaning of Sec.2(c) of the Pasa, and has further held that in order to prevent the petitioner from indulging into antisocial activity which adversely affect maintenance of public order, enforcement of ordinary law is insufficient and as such it is necessary to exercise the power under Sec.3(1) of the Pasa.

5. The grounds of detention, inter alia, state that about seven incidents for which criminal cases were registered against the petitioner are as under :-

That the first incident was registered vide CR.N.156/97 at Deesa City Police Station in respect to the offences made punishable under Secs.392 read with 114 of I.P.Code. It is, inter alia, alleged that the petitioner along with his accomplice have committed a robbery in Tanker bearing No. S.R. 36/1791 by dragging out the driver of the vehicle and have looted an amount of Rs.4,700/- lying in cash box kept in Cabin; that the petitioner and his accomplice have also looted cloths worth Rs.200/- for which offence was registered and investigated and during investigation, on 15/6/1998, petitioner was arrested. Said matter is pending for trial in the court.

That the second incident was registered against the petitioner vide CR.No.180/97 at Deesa City Police Station in respect to offences made punishable under Secs.457 and 380 of I.P.Code. It is, inter alia, alleged that in between 20-30 hrs of 7th December, 1997 and 6-15 hrs. of 8th December, 1997, a lock placed at the door of Jain temple situate at Shripal Society, Deesa City was broken opened and temple ornaments and silver articles worth Rs.93,750/- were stolen for which said offence was registered and present petitioner was arrested on 12/6/1998 during investigation. It is also alleged that the Police has recovered silver articles worth Rs.9,500/at the instance of present petitioner under a

discovery panchnama during investigation; that a chargesheet has been filed and said matter is pending for trial in the court.

That the third incident was registered against the petitioner dt. 6th December, 1997 vide CR.No.182/97, at Deesa City Police Station in respect to offences made punishable under Secs.457 and 380 of I.P.Code, wherein it is alleged that in between 8-00 a.m. of 6th December, 1997 and 11-00 a.m. of 8th December, 1997, a lock placed on the door of informant was broke opened and the tape-recorder of Philips Company made worth Rs.2,950/was stolen for which said offence was registered and investigated. During investigation, on 15th June, 1998, petitioner was arrested and said matter is pending for trial in the court.

That the fourth incident was registered vide CR.No.282/97 on 16th December, 1997 at Deesa Rural Police Station in respect to offences made punishable under Secs. 342, 457, 380 read with Sec. 114 of I.P.Code, wherein it is alleged that in between 1-30 a.m. to 5-00 p.m. of 16th December, 1997, the complainant was wrongfully confined in a room by placing lock at the outside of door and a theft of temple ornaments, silver articles and an amount of Rs.13,250/- from Charity Box were stolen. Vide above stated incident, offence was registered and during investigation, on 28th May, 1998 present petitioner was arrested; that during investigation at the instance of present petitioner, Police has recovered 600 Gms. silver and a bell made of brass etc. worth Rs.4,350/- under a discovery panchnama. Said matter is pending for trial in the court.

That the fifth incident was registered against the petitioner vide CR.No.2/98, at Deesa Rural Police Station in respect to offences made punishable under Secs.457 and 380 of I.P.Code. wherein it is alleged that in the night between 3rd and 4th January, 1998, a lock placed on a Jain Temple was broke opened and temple ornaments worth Rs.29,930/- was stolen for which said offence was registered and during investigation, on 4th June, 1998, the petitioner was arrested; that during investigation at the instance of petitioner, 800 Gms. silver and 7.250 Gms. golden bar worth Rs.7,780/ was recovered under a discovery panchnama. Said matter is pending for trial in the court.

That the sixth incident was registered against the petitioner vide CR.No.109/98, at Deesa Rural Police Station in respect to offences made punishable under

Secs.457 and 380 of I.P.Code, wherein it is alleged that in the first week of Kartak month, at any time, a lock placed at the door of Store Room of the Chosath Mataji Temple situate at village Khardosan, Tal. Deesa was broke opened and Amplifier, Speaker, Wall Clock etc. worth Rs.5,800/- were stolen for which an offence was registered under Secs. 457 and 380 of I.P.Code and during investigation, petitioner was arrested on 10th June, 1998. Said matter is pending for trial in the court.

That the seventh incident was registered vide CR.No.7/98 at Panthawada Police Station in respect to offences made punishable under Secs.395 read with Sec.34 of I.P.Code, wherein it is alleged that on 11th February, 1998 around 12-00 p.m. informant was beaten by stone throwing and iron bar and was tied with a rope and wrongfully confined in a corner in an inn, and temple ornaments, wall clock as well as amount in cash, total worth Rs.14,400/- was looted for which the said offence was registered; that during investigation, petitioner was arrested on 19th June, 1998 and at the instance of petitioner, wall clocks and knife etc. were recovered along with cash worth Rs.800/- under a discovery panchnama. Said matter is pending for trial in the court.

6. On the basis of aforesaid material placed before respondent no.1, the respondent no.1 has concluded that petitioner is a "dangerous person" within the meaning of Sec.2(c) of the Pasa and enforcement of ordinary law is insufficient to prevent the petitioner from continuing his criminal and antisocial activity which has been prejudicially affecting the maintenance of public order, and as such, the impugned order is passed.

7. The petitioner has challenged the impugned order on numerous grounds. However during submissions, learned advocate appearing for the petitioner has restricted the contest on two grounds as stated hereunder:-

(a) That all throughout the seven incidents, before passing the order of detention, the petitioner was in judicial custody, as arrested and not released on bail in the offences registered against the petitioner and as such the apprehension shown by the detaining authority that the petitioner is likely to indulge in antisocial activity was misplaced and order of detention is bad in law.

(b) That the last incident against the

petitioner being dated 11th February, 1998, the belated action taken on 11th November, 1998 suffers from vice of delay and as such subjective satisfaction has been vitiated and order deserves to be set aside.

7. It may be noted that this Court, while deciding the matter of ELESH N. PATEL Vs. COMMISSIONER OF POLICE, AHMEDABAD, reported vide 1997 (1) G.L.H. 381, referring the observations made by the Supreme Court in the matter of JAGAN NATH BISWAS Vs. STATE OF WEST BENGAL, reported vide AIR 1975 SC 1516, has held that passing of detention order subsequent to last incident ipso facto is not fatal because delay may be unavoidable and reasonable in certain cases. What is required by law is that the delay must be satisfactorily explained by the detaining authority.

8. In the instant case, the ground of detention is devoid of any explanation as to why action is taken as late as on 16th November, 1998. Not only that despite service of rule, neither respondent no.2 nor any authority has filed any affidavit providing any reasonable explanation for such a delay in taking action. Under the circumstances, live link between alleged criminal and antisocial activity of the petitioner between last date of the incident and the date of taking action having been snapped, the subjective satisfaction reached by the authority has been vitiated. As the petitioner is succeeding only on one contention, it is not necessary to deal with other contentions as raised in the petition. Hence the impugned order of detention deserves to be quashed and set aside.

9. On the basis of aforesaid discussion, the impugned order of detention dt. 16th November, 1998 passed by respondent no. 2 -The District Magistrate, Banaskantha against the petitioner -Shahbuddin alias Sayabana Sindhhi Dafer Bhatti is hereby quashed and set aside. The petitioner is directed to set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

Dt. 6/9/1999. ----

(ccshah)